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Summary record of the 175th meeting
Held at the Palais Wilson, Geneva, on Friday, 27 March 2015, at 10 a.m.

Chairperson: Mr. Cisternas Reyes

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 35 of the Convention (*continued*)

Initial report of Germany (continued) (CRPD/C/DEU/1; CRPD/C/DEU/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

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2. **Ms. Wurster** (Germany), replying to questions posed at the previous meeting, described the implementation of the recommendations concerning children with disabilities made in the concluding observations of the Committee on the Rights of the Child on the combined third and fourth periodic reports of Germany to that body (CRC/C/DEU/CO/3-4). She said, with regard to the recommendation contained in paragraph 51 of the concluding observations, that German law required government youth services to involve children and young people in all decisions affecting them. Since January 2014, numerous activities had been undertaken in order to further enhance children's participation in decision-making, and an evaluation of the situation would be submitted to the German Bundestag at the end of 2015. With regard to the recommendation contained in paragraph 53, a comprehensive strategy to protect young people from sexual abuse had been developed, and the Government had allocated 4 million euros to a nationwide pilot project to protect young people with disabilities in institutions from such abuse. Regarding the recommendation contained in paragraph 55, children of migrants had the same rights as all other children in Germany, and families with children with disabilities who had a migration background also had access to benefits and support.

3. **Mr. Pfaff** (Germany), referring to the recommendation contained in paragraph 51 (c) of the concluding observations, said that the education authorities in Germany always approached parents first about decisions on whether to enrol children in special education, on account of the rights enjoyed by parents as custodians of their children and because German family law stipulated that parents should discuss with their children all decisions affecting them; that was true for children with and without disabilities. Where the parents of a child with a learning disability or behavioural disorder were opposed to the placement of their child in a special school, perhaps for fear of the child's being stigmatized, they could challenge the school authorities' decision in that regard before the courts. However, there were very few such cases, and they accounted for a very small percentage of the total number of students affected.

4. **Ms. Brunozzi** (Germany) said that section 179 of the Criminal Code, which dealt with the sexual abuse of persons incapable of resistance because of a mental illness or disability, did not discriminate against persons with disabilities but prescribed a heavier penalty for offenders in such cases based on the fact that they had exploited the victim's vulnerability. An initiative had been recently launched to amend section 179 in order to provide for the rehabilitation of persons affected by such abuse.

5. The General Anti-Discrimination Act had been adopted for the purpose of incorporating in national legislation the four European Union anti-discrimination directives (2000/43, 2000/78, 2002/73 and 2004/113). The Act did not specify what constituted reasonable accommodation for persons with disabilities, which gave rise to legal uncertainty. Indeed, what was appropriate and reasonable could be defined only on a case-by-case basis. Although, under the Act, it was possible for persons with disabilities to

receive differentiated treatment, such treatment did not constitute discrimination because it was authorized only on the grounds enumerated in the law.

6. **Mr. Kügele** (Germany) said that his Government had taken measures to systematically reduce barriers to access to health care for persons with disabilities and tailor health-care and long-term care provision to their needs. For example, all health-care providers were required to take into account the particular situation of persons with disabilities in all interactions with them. A series of planned legislative amendments would provide for the establishment of special medical treatment centres for persons with intellectual disabilities and severe multiple disabilities, and a federal initiative had been launched to develop a web-based tool intended to help doctors ensure the accessibility of their medical practices.

7. **Mr. Morten** (Germany) said that a European Union directive, which had been incorporated in German law, provided that persons with disabilities were entitled to ground support at airports and more flexible seating assignments in aircraft. It also provided for a complaint mechanism in the event they felt that they had been subjected to discrimination.

8. The principle of universal design, whereby products and environments were planned and designed to be accessible to everyone, without individual adaptation or special design, played an important role in both the public and private sectors, and his Government maintained a regular dialogue with private-sector actors in order to promote it. Both the federal Act on Equal Opportunities for Persons with Disabilities and the acts on equal opportunities adopted by the Länder focused on accessibility by means of universal design. Germany was one of the pioneers in universal design, which it believed must be undertaken in cooperation with end users. His Government had invested heavily in making train stations and urban infrastructure accessible to persons with disabilities, and those efforts would continue in full force in 2015.

9. **Ms. Knospe** (Germany) said that the campaign entitled "Handicapping is Curable", which had been conducted by the Federal Ministry of Labour and Social Affairs, had been intended to change attitudes about disability. The term "handicapping" referred to the ways in which the environment failed to take people's disabilities into account, and it was that failure that could be cured by removing the obstacles in the way of persons with disabilities, not the disabilities themselves.

10. **Mr. Fischels** (Germany) said that, as a result of the actions of organizations of persons with disabilities, much progress had been made in terms of improving the accessibility for persons with disabilities of both public and private television and radio programmes in Germany. Currently, some 93 per cent of all television programmes were captioned; in 2012, that figure had stood at only 49 per cent. Since January 2013, public television stations had also expanded their audio description systems.

11. **Mr. Richard** (Germany) said that sign-language interpreters were used routinely for evening news broadcasts and similar public information programming. However, improvements in accessibility were still needed with regard to private television stations, and the Länder were encouraging efforts in that regard. There were at least eight universities in Germany that offered sign language interpreting as part of their courses, thus providing a good supply of trained interpreters to the job market.

12. **Mr. Schmachtenberg** (Germany), responding to a question posed by Ms. Quan-Chang concerning the alleged use in Germany of certain types of forced psychiatric treatment that were tantamount to torture, said, if the implication was that State-induced torture was practised in the country, then that implication was false. Institutions for persons with disabilities were monitored by the National Agency for the Prevention of Torture, which had been set up in 2008. The agency also monitored prisons, police stations, psychiatric hospitals and retirement and children's homes. That measures taken to protect

persons from harming themselves or others in such institutions could be perceived as torture was inescapable and highlighted the importance of monitoring and of reducing the use of restraints.

13. **Mr. Lütter** (Germany) said that guardianship in Germany was a system of supported decision-making the core element of which was the right to self-determination. A person could not be placed under guardianship against his or her will, and guardianship was ordered only if the person concerned had no authorized representative to act on his or her behalf. Recourse to guardianship did not influence the determination of a person's legal capacity, nor was it synonymous with legal incapacity; rather it gave rise to a relationship in which the person under guardianship was supported in taking decisions, transmitting those decisions to the judicial system and ensuring their implementation. The actions of guardians were always guided by the wishes and well-being of the individual under guardianship; guardians could not give precedence to their own wishes. Substitute decision-making was possible in very specific situations and under very restrictive conditions.

14. The institutionalization of persons in Germany was in conformity with the requirements of article 14 of the Convention, and a person could not be deprived of his or her liberty solely on the basis of having a disability. Persons compulsorily admitted to hospital had access to legal remedies in order to challenge the legality of their admission. Compulsory admission to a hospital or forensic clinic was authorized only if the person concerned was unable to act on his or her own behalf and required treatment in order to avert a major health threat that could be cured only by that treatment or represented a suicide or self-harm risk.

15. A patient health-care directive had been introduced in 2009 as a means of reducing forced admissions. It was a legal document that allowed individuals to decide, in advance, which medical treatments or surgical interventions they would agree to receive in the event that they became incapacitated or could no longer speak for themselves. A legal guardian could not override the health-care directive of a person under guardianship. Where no health-care directive had been prepared, compulsory medical treatment could be carried out only under specific conditions, which included the following: the individual under guardianship had to be unable to see the need for the treatment; an attempt had to be made to convince him or her to submit to the treatment; the treatment had to be essential to the person's well-being and the benefit proportionate to the risk involved; and the treatment had to be ordered by a court.

16. The Federal Government acknowledged that it was necessary to improve the system of supported decision-making. Although university courses in guardianship law were offered, they were not a prerequisite for acting as guardian, and it was the courts that decided whether prospective guardians were suited to the duties expected of them. In the course of 2015, the Federal Ministry of Justice and Consumer Protection would commission a study to determine whether, in practice, the German guardianship regime was consistent with the provisions of the Convention and what steps could be taken to improve the competence of guardians. After being brought into line with the new guidance, the guardianship manual would indicate that guardianship was not the same as legal representation and that guardians were required to comply with the provisions of the Convention.

17. The "reservation of consent" (*Einwilligungsvorbehalt*) was a measure that could be ordered by a court. It had been instituted on the basis of article 4 of the Convention and its purpose was to avoid abuse in connection with the exercise of the right to consent by persons with disabilities who had been placed under guardianship. It could be applied only in order to avert a substantial risk to the individual concerned, or to his or her property, and was consistent with the State's obligation to protect citizens from exploitation and harm and to protect their rights to self-determination and decision-making. Guardians could afford

protection only from unintentional decisions. A precondition for the exercise of the "reservation of consent" was that the person under guardianship had to be incapable of understanding that his or her assets were at risk or that he or she would suffer some other form of harm.

18. The criteria for imposing the use of restraints were the same as those for compulsory institutionalization or admission to hospital. A new system, designed to reduce or abolish the use of restraints without negative results for patients, was being applied, and alternative measures were being suggested in order to obviate the need for court-ordered restraint. In 2010, some 100,000 orders for the use of restraints had been issued, while in 2013, that figure had dropped to 75,000, representing a 25-per-cent decrease. Although the Government had not yet achieved its ultimate objective, the trend was definitely heading in the right direction.

19. **Mr. Dusel** (Germany) said that, in accordance with article 16, paragraph 3, of the Convention, independent authorities at the level of the Länder provided quality assurance and advice to facilities designed to serve persons with disabilities in order to prevent the occurrence of exploitation, violence or abuse. In the event that a resident filed a complaint, the home supervisory body visited the facility in question, provided advice and investigated the complaint. The approach had proved to be very effective.

20. **Ms. Wurster** (Germany) said that Germany respected the right of all women, whether or not they had a disability, to have a family. A project to train counsellors in giving advice to pregnant women with learning disabilities had been developed, and websites had been adapted in order to display the relevant information in an easy-to-read format.

21. **Ms. Brunozzi** (Germany) said that persons with speech or hearing impairments could use sign language interpreters or other technical aids in order to gain access to the judicial system. In 2013, persons who were blind or had visual impairments had been granted the right to receive and submit all relevant court documents in an accessible format. In 2018, the Judicial System Act would be amended to provide for secure and accessible communication with courts for persons with disabilities. Persons with disabilities who had committed or were accused of a crime had the same rights as other persons; there were no provisions or mechanisms in place that denied persons with disabilities — on the basis of their disability — the right to a fair trial.

22. **Ms. Knospe** (Germany) said, with regard to the criticism that Germany spent more money on inpatient care than on outpatient care for persons with disabilities, that that trend had been reversed and that, since 2005, expenditure for outpatient care had increased significantly.

23. **Mr. Schmachtenberg** (Germany) said that benefits for persons with disabilities were provided through the German social security system by the health insurance fund, the long-term care insurance fund, the occupational accident insurance fund or the unemployment insurance fund, depending on the particular case in question. The current Government had plans to transfer certain benefits for persons with disabilities away from the system of social assistance and was considering how the income of the persons concerned should be taken into account when calculating benefit payments in the future.

24. **Mr. Morten** (Germany) said, with regard to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled, that there was some controversy within the European Union as to whether the ratification of the instrument fell within the exclusive competence of the European Union or whether it was a treaty of shared competence with the European Union member States. He could not offer any further information, since discussions on the matter were still under way.

25. Turning to the issue of access to the emergency call system, he said that persons with hearing impairments could contact the emergency services by fax. The disadvantage, of course, was that one had to have a fax machine at hand. Although it was not currently possible to contact emergency dispatch centres by text message, efforts were being made to address that situation. In the event of an attack on the country or a natural or man-made disaster, a nationwide system would ensure that a warning was transmitted to the country's public broadcasters, to which persons with disabilities could connect with a variety of means, including vibration devices. Lastly, drills involving emergency response personnel took into account the needs of persons with disabilities.

26. **Mr. Giese** (Germany) said that a good deal was done to raise awareness of human rights among judges, in particular the rights of persons with disabilities. In early March 2015, for instance, the Federal Ministry of Labour and Social Affairs had co-hosted an event on what the courts could do to make human rights real. The Convention on the Rights of Persons with Disabilities had been used as an example. Other awareness-raising activities included those of the German Academy of Judges, which had long organized events on international human rights instruments, including the Convention. The Academy of European Law in Trier, which provided training to legal practitioners, offered periodic seminars on the Convention, as did the Länder.

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27. **Mr. Lovászy** asked whether Germany, in view of the demographic trends in the country, offered would-be parents, including single women and women with disabilities, opportunities or even incentives to adopt disabled children in particular. He enquired what accounted for the high rates at which disabled children dropped out of school and whether there was a detailed road map, including specific quantitative goals, for increasing the number of disabled children in mainstream schools. Information on the use of German sign language and other forms of accessible communication for students pursuing graduate degrees would be welcome. Since private employers were apparently obliged to provide reasonable accommodation only for employees who were already on board, he wondered what procedure was followed when a qualified person with a disability applied for a job at a workplace where such provision had not previously been made. Lastly, he wished to know whether the Federal Constitutional Court had handed down any decisions regarding the primacy of international conventions and, if so, what effects those decisions had had in the Länder.

28. **Mr. Tatić** asked how many qualified sign-language interpreters there were in Germany and what measures were being taken to ensure that fears of stigmatization did not prevent the parents of children with disabilities from availing themselves of the educational support services to which their children were entitled.

29. **Mr. Kim** Hyung Shik said that he was unsure whether teachers in the State party fully understood what inclusive education entailed and that he therefore wondered what kind of training they were given. He asked whether inclusive education was supported by parents and, perhaps more importantly, by the teachers of the more than 300,000 students in the country's special schools. Given that special education teachers had been the major obstacle to introducing inclusive education in his own country, he wished to know how the German authorities intended to deal with any resistance from that particular quarter.

30. Regarding employment, table 2 in the State party's report, describing schemes to integrate persons with disabilities into the labour market, was very useful, but it would have been more useful still if information on such topics as turnover, wages in sheltered workshops relative to wages in the open labour market and job satisfaction had been provided. In that connection, he asked what plans the authorities had to phase out their

reliance on sheltered workshops, in which more than a quarter of a million persons with disabilities were currently employed.

31. The Government's commitment to providing overseas aid was commendable. He wished to know, however, what initiatives it had taken to strengthen disabled people's organizations through its international cooperation efforts and, especially, to enable persons with disabilities to play a critical role in promoting disability-inclusive development; too often, foreign funds were simply dropped into developing countries. Lastly, he asked what percentage of the budget had been earmarked for humanitarian aid in the past five years.

32. **Ms. Quan-Chang** said that using restraints on persons with disabilities, a fairly common practice in the State party's psychiatric and other institutions, was indeed akin to torture. She asked whether persons with disabilities were really able to give free and informed consent to medical procedures, in particular those affecting their fertility, and how the State party ensured that such persons had access to health care, particularly reproductive health care. The delegation's comments on the effects of guardianship on the enjoyment by persons with disabilities of their political rights would be of interest, as would details of the State party's plans to make the inclusion of persons with disabilities an integral part of its sustainable development goals.

33. **Ms. Peláez Narváez** asked how the State party ensured the privacy of persons with disabilities in institutions and how it ensured that persons with disabilities who married and formed families could keep their children. She enquired how the Government was making certain that forced sterilization of women and girls with disabilities was no longer practised. In that connection, she would appreciate a response to her question on measures taken to put an end to all forms of female genital mutilation.

34. In view of their alarmingly low workforce participation rates, she wished to know what the State party was doing to promote the employment of women with disabilities. Information on any programmes or strategies to combat the social and economic exclusion of women with disabilities, in particular migrant women, would be welcome.

35. **Mr. Buntan** asked whether the German authorities subscribed to the notion that disaster risk reduction should be an integral part of the sustainable development goals to be adopted in New York in September 2015 and, if so, how they would ensure that the relevant measures were inclusive of persons with disabilities. He also wished to know what efforts the State party would make to ensure that persons with disabilities were taken into consideration in all aspects of the country's international development assistance, in particular those relating to disaster risk reduction.

36. He wondered whether the large number of students still in special education in Germany had anything to do with a failure to make the mainstream education system sufficiently inclusive. It would be useful to have additional information on the status of Braille and sign language, including tactile sign language. Regarding work and employment, he asked whether the Government had taken any steps to help persons with disabilities move more successfully from sheltered workshops to the open labour market and whether it was aware that in some fields — the law, for instance — increasing reliance on information technologies could further widen the gap between persons with disabilities and others. Lastly, he enquired about the ways persons with disabilities were helped to vote and asked whether they were also given help when they decided to run for public office.

37. **Mr. Langvad** asked why, given the great importance of being included in the democratic process, any person could be deprived of the right to vote in Germany. He also wished to know what measures were being taken to lower the cost of services used by persons with disabilities, ensure that inclusive education was a right and provide persons in institutions with access to health care on an equal basis with others. Any information on the

number of cases of harm done to persons with disabilities who were treated without their free and informed consent would be appreciated.

38. **Mr. Parra Dussan** asked what was being done to ensure that the many new occupations created as a result of the State party's technological prowess were accessible to persons with disabilities. He requested additional information on the employment of persons with disabilities in the public sector and any initiatives to encourage their acquisition of work experience in the open labour market. Lastly, he asked how the State party ensured that persons with disabilities enjoyed the right not only to vote but also to stand for office.

39. **Mr. Ruskus** said that, in view of the State party's apparent emphasis on special education, he would appreciate information on any comprehensive national strategy to transform special schools or programmes into inclusive environments. Along the same lines, he wished to know whether there was a strategy to strengthen the education system's ability to meet a diversity of educational needs and what measures had been taken to support persons with disabilities as they moved from special schools to mainstream schools and from vocational training to employment. He enquired to what extent university curricula covered disability issues.

40. **Mr. Al-Tarawneh** said that he was familiar with the development aid offered by the State party's technical cooperation enterprise and wondered whether it could not stress the inclusion of disability issues more effectively. In his country, Jordan, aid that targeted the many Syrian refugees with disabilities would be most welcome, for instance, especially as it seemed that such refugees found their applications for asylum rejected at disproportionately high rates.

41. **Mr. Pyaneandee** asked whether the German authorities conceded that uniform implementation of the Convention at the federal and Länder levels had not succeeded and, if so, whether they believed that the legal system as a whole should evolve in order to ensure a greater degree of consistency and predictability and to give persons with disabilities greater scope to challenge discrimination. He wondered whether the delegation agreed that the State party's failure to implement article 33, paragraph 2, of the Convention was the source of a number of other discriminatory practices and the reason for the State party's inability to provide data on the number of complaints regarding discrimination. In view of the problems posed by its federal structure, was it not high time for Germany to work with other States that shared its heritage in order to achieve common solutions?

42. **Mr. You** Liang asked what measures the State party was taking to help persons with disabilities join the workforce, so that they might not only share in the fruits of economic and social development but also contribute to it. He enquired whether Germany had plans to cooperate with developing countries in the implementation of the Convention. More specifically, since many German companies had developed high-quality assistive devices, he wondered whether there were any plans to help developing countries manufacture better ones.

43. **Mr. Basharu** asked whether the State party intended to continue disability mainstreaming in international cooperation despite the global economic crisis and whether it supported the inclusion of additional references to persons with disabilities in the post-2015 development agenda, particularly in relation to the sustainable development goals on poverty and health. He also wished to know what reasonable accommodation measures were available for deaf and hard of hearing persons and pregnant women with disabilities in hospitals.

44. **Ms. Kingston** said that she questioned how special schools could be considered compatible with the concept of inclusion. She asked whether there was a national network of outpatient psychiatric care facilities and whether rights-based training was provided to

medical professionals, particularly in regard to communication and respect for the principle of free and informed consent. Regarding employment, further information on the functioning and financing of sheltered workshops, the measures taken to support persons with disabilities making the transition to the open labour market and the efforts made to collect data at a national level on the accessibility of workplaces would be appreciated. Lastly, she wished to know whether the Government planned to design human rights indicators to monitor the implementation of the Convention, whether it would provide financial support for the work of the independent monitoring mechanism on an ongoing and permanent basis, and whether it intended to grant legal status and provide adequate resources to the Länder commissioners for matters relating to persons with disabilities.

The meeting was suspended at 12.05 p.m. and resumed at 12.20 p.m.

45. **Mr. Schmachtenberg** (Germany) said he strongly refuted the claim that torture was practised in Germany. His Government did not share the view of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that the use of restraints or of chemical or electroconvulsive therapy constituted torture. He wished to confirm that female genital mutilation was indeed an offence and was punishable under the Criminal Code.

46. **Mr. Asmussen** (Germany) said that the Government remained committed to building an inclusive education system and had allocated some 500 million euros to inclusive education initiatives. All teachers received training on the importance of inclusive education and were responsible for ensuring the inclusion of children with disabilities in mainstream schools wherever possible. However, the school system was complex and diverse and would require long-term reform before it could accommodate all children with disabilities. Children attending special schools were taught by specially trained teachers and received a high level of instruction tailored to their needs. The number of children with intellectual disabilities obtaining special school-leaving certificates was not yet reflected in national data, but efforts were under way to rectify that situation. Persons with disabilities had equal access to university education and could request sign language interpretation and textbooks in alternative formats.

47. **Mr. Fischels** (Germany) said that, while the unemployment rate among persons with disabilities was higher than that for persons without disabilities, the overall participation of persons with disabilities in the open labour market had steadily increased over the past few years. The Government had allocated 2.2 billion euros to improve employment opportunities for persons with disabilities, including through wage subsidy and employment rehabilitation initiatives. It had also established a quota of 5 per cent for the employment of persons with disabilities in the civil service, which many federal departments and ministries exceeded.

48. **Mr. Köhne** (Germany) said that the total number of persons with disabilities working in sheltered workshops had increased owing to the fact that those persons were living and working for longer. Given the difficulties experienced by some persons with disabilities in making the transition from sheltered employment, steps had been taken to ensure that sheltered workshops modelled their working conditions more closely on those that prevailed in the open labour market. Sheltered workshops were obliged to provide assistance and support to persons with disabilities who expressed the desire to work in the open labour market, and national incentives had been introduced to encourage private sector employers to hire persons with disabilities for mainstream labour market positions. Persons with disabilities working in sheltered workshops received a monthly wage of 200 euros, which could be supplemented by income support benefits. They also enjoyed specific pension privileges.

49. **Mr. Boehl** (Germany) said that every person had the right to vote, including persons with disabilities. The only exception to that rule was in the case of persons declared legally incapable by the federal courts. Special provisions had been introduced to ensure that persons with disabilities could access polling stations and ballot papers were provided in alternative formats. Persons with disabilities could also stand for election on the same basis as persons without disabilities.

50. **Mr. Kügele** (Germany) said that persons with disabilities had equal access to health services, including persons living in institutions and persons with restricted mobility. Deaf or hard of hearing persons seeking medical treatment also had the right to assistance from a sign language interpreter funded through the statutory health insurance scheme.

51. **Mr. Albrecht** (Germany) said that inpatient, outpatient and mobile psychiatric services were available for all persons, including persons with disabilities.

52. **Ms. Lösekrug-Möller** (Germany) thanked the Committee members for their comments and recommendations and reiterated her country's commitment to implementing the Convention.

53. **Mr. Aichele** (National Monitoring Body for the United Nations Convention on the Rights of Persons with Disabilities, Germany) said that, while considerable progress had been made towards upholding the rights of persons with disabilities in Germany, more work remained to be done, notably to secure the rights of those persons to exercise legal capacity and to vote, their right to live and work in the community, and their rights to inclusive education and personal inviolability.

54. **Ms. Kingston** (Country Rapporteur) said that the State party was to be congratulated on its efforts to build a fully inclusive society. She wished to encourage it to address the remaining concerns highlighted by the Committee.

The meeting rose at 1.05 p.m.